

# **In the United States Patent and Trademark Office**

In re the Application of:

Leland James Wieschuegel, <i>et al.</i>	)	
Serial Number: 09/726,009	)	Group: 3628
Docket Number: AUS9-2000-0738-US1	)	Examiner: Clement B. Graham
Filed on: 11/29/2000	)	
For: "System and Method for Online	)	
Offer and Bid Management with Scaled	)	
Bids"	)	

## **APPEAL BRIEF**

*(First Reinstatement)*

### ***Real Party in Interest per 37 CFR §41.37(c)(1)(i)***

The subject patent application is owned by International Business Machines Corporation of Armonk, NY.

### ***Related Appeals and Interferences per 37 CFR §41.37(c)(1)(ii)***

This application is related to US Patent Application serial number 09/714,726, which is currently under appeal by Appellants. No decision has been reached by the Board in this appeal.

### ***Status of Amendments after Final Rejections per 37 CFR §41.37(c)(1)(iv)***

On February 2, 2007, Appellants reinstated an Appeal originally filed on May 24, 2005, from the rejections of Claims 1 - 21. Claims 1, 7, and 13, were amended subsequent to reopening of prosecution following the Appeal on May 24, 2005. All other claims are in their originally filed state. The claims are reproduced in the Appendix to this Appeal Brief.

### ***Status of Amendments after Final Rejections per 37 CFR §41.37(c)(1)(iv)***

No amendments to the claims have been submitted or entered after final rejections.

***Summary of the Claimed Subject Matter per 37 CFR §41.37(c)(1)(v)***

The present invention provides sales offering method and system for restricting access by traders to collected sealed bids in an online auction-like business-to-business offering and bidding system (*pg. 12 lines 8 - 14*). In this particular business-to-business offering arrangement, a “trader” is an intermediary third party (*Fig. 2 #24*) between a purchasing broker (*Fig. 2 #25*), and a offeror (*Fig. 2 #21*). This type of three-party auction-like offering system is employed by some manufacturers to promote sales of products to retail outlets via a trader or broker (*pg. 12 lines 2 - 3*).

Responsive to querying the bid repository by a trader for bids which match parameters of a Broker Profile Matrix (*Fig. 4*) associated with the bidding-party (e.g. the broker) (*Fig. 7 #73 and #76, pg. 20 lines 11 - 14*), only bids which are indicated as being unsealed by the seal status indication field (and which match the Broker Profile Matrix parameters), the details of the unsealed are presented to the trader and the details of the sealed bids are prevented from presentation (*pg. 20, lines 11 - 14*).

Thus, through employing the present invention, a three-party business-to-business offering system is enabled to suppress showing details of sealed bids to traders, while showing details only of unsealed bids which match the Broker’s Profile Matrix.

More specifically, claim 1 sets forth a sales offering method for restricting access by traders to collected online sealed bids in an online offering and bidding system, by:

- (1) providing a computer-readable bid repository of collected bids (*pg. 15 lines 8 - 10, Fig. 5 #52*) communicative to an online offering and bidding system (*pg. 15 line 10 to pg. 16 line 5, Fig. 5 #51*), said collected bids each having an associated seal status indication field (*pg. 19 line 21 - pg. 20 line 4*) for indicating whether is bid is a sealed bid or an unsealed bid (*pg. 19 line 22 - pg. 20 line 4*);
- (2) querying (*pg. 16 lines 8 - 15*) said bid repository for bids which match parameters of a Broker Profile Matrix (*pg. 13 line 13 - pg. 15 line 7, Fig. 4*) associated with a trader and which are indicated as being unsealed bids by said seal status indication field, said trader representing a intermediary third party between a bidder and an offeror (*a “trader” is an intermediary third party as shown in Fig. 2 #21, #24, and #25*);

- (3) preventing transfer of sealed bids from said bid repository to a trader responsive to said query (*unsealed bids are delivered from the bidding system to the trader's console, sealed bids remain at the bidding system, per pg. 20 lines 11 - 14, and pg. 21 lines 4 - 7*); and
- (4) presenting via a computer user interface matching unsealed bids to a trader with whom said Broker Profile Matrix is associated (*pg. 21 lines 4 - 7*).

Claim 7 sets forth a computer-readable medium containing program code for accomplishing the invention, wherein the program code performs the steps of:

- (1) providing a computer-readable bid repository of collected bids (*pg. 15 lines 8 - 10, Fig. 5 #52*) communicative to an online offering and bidding system (*pg. 15 line 10 to pg. 16 line 5, Fig. 5 #51*), said collected bids each having an associated seal status indication field (*pg. 19 line 21 - pg. 20 line 4*) for indicating whether is bid is a sealed bid or an unsealed bid (*pg. 19 line 22 - pg. 20 line 4*);
- (2) querying (*pg. 16 lines 8 - 15*) said bid repository for bids which match parameters of a Broker Profile Matrix (*pg. 13 line 13 - pg. 15 line 7, Fig. 4*) associated with a trader and which are indicated as being unsealed bids by said seal status indication field, said trader representing a intermediary third party between a bidder and an offeror (*a "trader" is an intermediary third party as shown in Fig. 2 #21, #24, and #25*);
- (3) preventing transfer of sealed bids from said bid repository to a trader responsive to said query (*unsealed bids are delivered from the bidding system to the trader's console, sealed bids remain at the bidding system, per pg. 20 lines 11 - 14, and pg. 21 lines 4 - 7*); and
- (4) presenting via a computer user interface matching unsealed bids to a trader with whom said Broker Profile Matrix is associated (*pg. 21 lines 4 - 7*).

Claim 13 sets forth a system according to the invention which includes:

- (1) a bid database containing collected bids (*pg. 15 lines 8 - 10, Fig. 5 #52*), said database being accessible and queriable by said sales offering system (*pg. 15 line 10 to pg. 16 line 5, Fig. 5 #51*), said collected bids each having an associated seal

- status indication field (*pg. 19 line 21 - pg. 20 line 4*) for indicating whether is bid is a sealed bid or an unsealed bid (*pg. 13 line 13 - pg. 15 line 7, Fig. 4*);
- (2) a database query server (*pg. 16 lines 8 - 15*) communicative to said bid database for querying said bid repository for bids which match parameters of a Broker Profile Matrix (*pg. 13 line 13 - pg. 15 line 7, Fig. 4*) associated with a trader and which are indicated as being unsealed by said seal status indication field, said trader representing a intermediary third party between a bidder and an offeror (*a "trader" is an intermediary third party as shown in Fig. 2 #21, #24, and #25*);
- (3) a transfer preventor configured to prevent transfer of sealed bids from said bid repository to a trader responsive to said query (*unsealed bids are delivered from the bidding system to the trader's console, sealed bids remain at the bidding system, per pg. 20 lines 11 - 14, and pg. 21 lines 4 - 7*); and
- (4) a bid communicator for presenting matching queried unsealed bids to a trader with whom said Broker Profile Matrix is associated (*pg. 21 lines 4 - 7*).

***Grounds for Rejection For Which Review is Sought per 37 CFR §41.37(c)(1)(vi)***

Review by the Board of the rejections of Claims 1 - 21 under 35 U.S.C. §103(a) over US Patent 6,598,029 to Johnson, et al. (hereinafter “Johnson”), in view of US Patent 6,985,885 to Goldberg, et al. (hereinafter “Goldberg”) is hereby requested.

***Arguments per 37 CFR §41.37(c)(1)(vii)*****Rejections of Claims 1, 7, and 14 under 35 U.S.C. §103(a) over Johnson in view of Goldberg**

In the rationale for the final rejections of Claims 1, 7, and 14 over Johnson in view of Goldberg, it was stated by the examiner that Johnson fails to teach a Broker Profile Matrix or an indication of whether an electronic bid is sealed or unsealed, and thus Goldberg was combined with Johnson (pg. 2 of the Office Action, last paragraph).

Appellants believe Goldberg's disclosure is directly quoted in the Office Action from page 3 line 1 to line 17, but there is not indication in the formatting of the text of the Office Action (e.g. quote marks, double indent with font change, etc.) that the text is actually a direct quote. This could give an incorrect impression to some readers that this section of the Office Action is the examiner's interpretation or opinion of the reference. Clarification is requested.

**References Fail to Teach All Claim Elements, Steps and Limitations.** Goldberg's disclosure does indeed mention that their invention may be used in single-round sealed bid auctions, or multi-round sealed bid auctions, but there is little or no explanation of their sealing process and unsealing process. Whereas broad swaths of Goldberg (e.g. entire columns) have been cited, it is difficult to know exactly where the examiner believes Goldberg teaches a bid sealing and unsealing process or indicator. However, presumably, Goldberg's embodiment using a secure container (col. 7 lines 23 - 44) is where the examiner believes this is found. However, in this embodiment, Goldberg's system always transfers the bid to the auctioneer, but only an auctioneer who has the key to decrypt the encrypted container can open or view the bid details.

Encryption of bids is not the same as controlling the transfer of bids as Appellants have claimed, however. In Goldberg's arrangement, the bids are always transferred (not prevented from transfer if the bid is sealed, as claimed by Appellants), and Goldberg's bids are transferred to an auctioneer (e.g. the "offeror") (not a trader, as claimed by Appellants). In order for

Goldberg's method to be at least similar to unsealing, there would have to be some sort of disclosure about the encryption preventing opening of the bid, even with a valid password, until a certain time in the auction process, whereas the term "sealed" in auction parlance implies prevention of opening or reviewing the bid details until a certain condition (such as the auction bid close time) have occurred. Appellants' system achieves this functionality not by encrypting the bids and always transferring them, but by preventing the transfer of the bids in the first place.

With respect to Appellants claim element, step, or limitation regarding a Broker Profile Matrix, and operations thereon, the examiner has stated that Johnson fails to teach a Broker Profile Matrix, but has not established where Goldberg teaches a Broker Profile Matrix.

In order for Johnson in view of Goldberg to render the Appellants' claims obvious under 35 U.S.C. §103(a), the references must teach all of the claim elements, steps, and limitations. Because the references fail to teach a Broker Profile Matrix, and prevention of the transfer of sealed bids to a broker from the auction system, a *prima facie* case of obviousness has not been properly established. For these reasons, the rejections of claims 1 - 21 should be reversed.

References Do Not Provide Enabling Disclosure for Proposed Combination. It has not been established by the examiner *how* Johnson would be modified to incorporate the features from Goldberg as proposed in the rationale for the rejections. In order for a *prima facie* case of obviousness to be properly established, not only do all of the claimed elements, steps, and limitations have to be taught by the references, but also the references must suggest how to make or accomplish the proposed modifications in a manner which would have enabled one of ordinary skill in the art at the time the invention was made to perform the modifications. No such citations from the references have been made, and thus a *prima facie* case of obviousness has not been established. Therefore, the rejections of Claims 1 - 21 should be reversed.

Motivation to Combine References is Erroneous. It was reasoned that the motivation to make the proposed combination would have been "in order to effect trades of trading instruments through automatic matching in which buyers and sellers who are willing to trade with each other is based on specific matching criteria" (last paragraph of pg. 4 of the Office Action.

It is unclear from the Office Action which reference provides this suggestion or motivation. Appellants have attempted to located this phrase in either Goldberg or Johnson, and

have been unable to find such a suggestion.

Whereas it is incumbent on the examiner, not the Appellants, to initially establish the *prima facie* case of obviousness, and whereas one condition of such obviousness is that the references themselves must provide the suggestion or motivation for combination and modification, a *prima facie* case of obviousness has not been properly established. Therefore, the rejections of claims 1 - 21 should be reversed.

***Request for Allowance of Claims***

This application has undergone four Office Actions, including one previous Appeal followed by reopening of examination. Rejections of the claims have been made over four different combinations of art, only one of which is relied upon in the current final rejections. The other three combinations of art have been shown to fail to render the Appellants claims as obvious.

Appellants submit that this application has been completely examined over the relevant art, and that the claims are in condition for allowance. Therefore, Appellants request allowance of claims 1 - 21.

Respectfully,

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**Claims Appendix**  
*per 37 CFR §41.37(c)(1)(viii)*

**Clean Form of Amended Claims**

Claim 1 (previously presented):

A sales offering method for restricting access by traders to collected online sealed bids in an online offering and bidding system, said method comprising the steps of:

providing a computer-readable bid repository of collected bids communicative to an online offering and bidding system, said collected bids each having an associated seal status indication field for indicating whether is bid is a sealed bid or an unsealed bid;

querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed bids by said seal status indication field, said trader representing a intermediary third party between a bidder and an offeror;

preventing transfer of sealed bids from said bid repository to a trader responsive to said query; and

presenting via a computer user interface matching unsealed bids to a trader with whom said Broker Profile Matrix is associated.

Claim 2 (original):

The method as set forth in Claim 1 wherein said step of providing a computer-readable bid repository comprises providing a computer database in which each sealed bid and unsealed bid are represented by one or more database records.

Claim 3 (original):

The method as set forth in Claim 2 wherein said step of providing database records representing sealed bids and unsealed bids comprises providing database records which include a field indicating a bid status as sealed or unsealed.



## Claim 4 (original):

The method as set forth in Claim 2 wherein said step of providing database records representing sealed bids and unsealed bids comprises providing database records which include a field indicating a bid seal expiration time.

## Claim 5 (original):

The method as set forth in Claim 1 wherein said step of unsealing one or more sealed bids in said bid repository through a restricted process comprises providing a secure system administrator console and identification process which allows only an authorized system administrator to change sealed bids to unsealed bids.

## Claim 6 (original):

The method as set forth in Claim 1 wherein said step of unsealing one or more sealed bids in said bid repository through a restricted process comprises:

- providing a bid seal expiration time parameter with each sealed bids;
- providing a system clock or timer;
- comparing each bid seal expiration time parameter with a current status of a system clock or timer responsive; and
- determining that bids for which bid seal expiration time parameters which are before or less than the current status of a system clock or timer are unsealed bids.

Claim 7 (previously presented):

A computer-readable medium containing program code for a sales offering computer system for restricting access by traders to collected online sealed bids in an online offering and bidding system, said program code when executed by a sales offering computer system causes the sales offering computer system to perform the steps of:

- providing a computer-readable bid repository of collected bids communicative to an online offering and bidding system, said collected bids each having an associated seal status indication field for indicating whether is bid is a sealed bid or an unsealed bid;

- querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed bids by said seal status indication field, said trader representing a intermediary third party between a bidder and an offeror;

- preventing transfer of sealed bids from said bid repository to a trader responsive to said query; and

- presenting via a computer user interface matching unsealed bids to a trader with whom said Broker Profile Matrix is associated.

Claim 8 (original):

The computer-readable medium as set forth in Claim 7 wherein said program code for providing a computer-readable bid repository comprises program code for providing a computer database in which each sealed bid and unsealed bid are represented by one or more database records.

Claim 9 (original):

The computer-readable medium as set forth in claim 8 wherein said program code for providing database records representing sealed bids and unsealed bids comprises program code for providing database records which include a field indicating a bid status as sealed or unsealed.

## Claim 10 (original):

The computer-readable medium as set forth in claim 8 wherein said program code for providing database records representing sealed bids and unsealed bids comprises program code for providing database records which include a field indicating a bid seal expiration time.

## Claim 11 (original):

The computer-readable medium as set forth in claim 7 wherein said program code for unsealing one or more sealed bids in said bid repository through a restricted process comprises program code for providing a secure system administrator console and identification process which allows only an authorized system administrator to change sealed bids to unsealed bids.

## Claim 12 (original):

The computer-readable medium as set forth in claim 7 wherein said program code for unsealing one or more sealed bids in said bid repository through a restricted process comprises program code for causing the sales offering computer system to perform the steps of:

- providing a bid seal expiration time parameter with each sealed bids;
- accessing or reading a system clock or timer;
- comparing each bid seal expiration time parameter with a current status of a system clock or timer responsive; and
- determining that bids for which bid seal expiration time parameters which are before or less than the current status of a system clock or timer are unsealed bids.

Claim 13 (previously presented):

A sealed bid sales offering system in a computer network, said computer network enabling communications between said sales offering system and trader consoles, said offering system comprising:

- a bid database containing collected bids, said database being accessible and queriable by said sales offering system, said collected bids each having an associated seal status indication field for indicating whether is bid is a sealed bid or an unsealed bid;

- a database query server communicative to said bid database for querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed by said seal status indication field, said trader representing an intermediary third party between a bidder and an offeror;

- a transfer preventor configured to prevent transfer of sealed bids from said bid repository to a trader responsive to said query; and

- an bid communicator for presenting matching queried unsealed bids to a trader with whom said Broker Profile Matrix is associated.

Claim 14 (original):

The sealed bid sales offering system as set forth in Claim 13 wherein said sales offering system is a computer network server.

Claim 15 (original):

The sealed bid sales offering system as set forth in Claim 14 wherein said computer network server is an Internet server.

Claim 16 (original):

The sealed bid sales offering system as set forth in Claim 14 wherein said computer network server is a Hyper Text Transfer Protocol (HTTP) server.

Claim 17 (original):

The sealed bid sales offering system as set forth in Claim 13 wherein said sales offering system is adapted for communications with trader console computers which are web browser devices.

Claim 18 (original):

The system as set forth in Claim 13 wherein said database query server is adapted to retrieve unsealed bids from said bid database for presentation to a trader which meet criteria including a match with a trader's location code.

Claim 19 (original):

The system as set forth in Claim 13 wherein said database query server is adapted to retrieve unsealed bids from said bid database for presentation to a trader which meet criteria including a match with a trader's goods category code.

Claim 20 (original):

The system as set forth in Claim 13 further comprising a restricted access administrator console communicative with said bid database for allowing conversion of sealed bids to unsealed bids.

Claim 21 (original):

The system as set forth in Claim 13 further comprising a system clock or timer for use by said database query server communicative to determine which seals of sealed bids have expired as a criteria for retrieving unsealed bids.

**Evidence Appendix**  
*per 37 CFR §41.37(c)(1)(ix)*

No evidence has been submitted by applicant or examiner pursuant to 37 CFR §§1.130, 1.131, or 1.132.

**Related Proceedings Appendix**  
*per 37 CFR §41.37(c)(1)(x)*

No decisions have been rendered by a court or the Board in the related proceedings as identified under 37 CFR §41.37(c)(1)(ii).